

SERVICE DATE – JULY 3, 2019

SURFACE TRANSPORTATION BOARD

Docket No. AB 290 (Sub-No. 117X)

NORFOLK & WESTERN RAILWAY—ABANDONMENT EXEMPTION—BETWEEN
INDIANAPOLIS & TIPTON IN MARION, HAMILTON, & TIPTON COUNTIES, IND.

Decided: July 2, 2019

On August 1, 2017, the cities of Fishers, Ind. (Fishers), and Noblesville, Ind. (Noblesville), and Hamilton County, Ind. (collectively, the Owners), jointly filed a petition in Docket No. FD 36137 to partially revoke their exempt status¹ on 37.56 miles of rail line between milepost I-2.13 at Indianapolis, Ind., and milepost I-39.69 at Tipton, Ind. (the Line), in order to pursue interim trail use under Section 8(d) of the National Trails Systems Act (Trails Act). By decision served May 31, 2018, the Board denied the petition as unnecessary, finding that the Owners could directly invoke the Trails Act without revoking their exempt status or commencing a new abandonment proceeding. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 (STB served May 31, 2018).

Thereafter, the Board received three requests for issuance of notices of interim trail use or abandonment (NITUs) for portions of the Line, one each from Fishers, Noblesville, and the City of Indianapolis, Ind. (Indianapolis), in Docket No. AB 290 (Sub-No. 117X).² Because the three NITU requests complied with the requirements of 49 C.F.R. § 1152.29 and the Owners were willing to negotiate for trail use with all three proposed sponsors, on December 21, 2018, the Board issued the three NITUs. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 et al. (STB served Dec. 21, 2018).

On March 29, 2019, US Rail, Inc. (US Rail) filed a motion to vacate the three NITUs and reactivate service on the NITU Line. Also on March 29, 2019, US Rail filed a motion for preliminary injunction pursuant to 49 U.S.C. § 1321(b)(4) to enjoin the Owners from removing track and other rail assets along the NITU Line. These motions are pending and will be addressed in a subsequent decision.

¹ As explained further in the Board's May 31, 2018 decision in Docket No. FD 36137, the Owners' purchase of the Line in 1995 was not subject to agency licensing authority pursuant to Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions (Common Carrier Status of States), 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982).

² The three contiguous segments of the Line for which NITUs were requested, which together extend between milepost I-2.13 and milepost I-23, are referred to hereinafter as the NITU Line.

On June 11, 2019, Fishers, Noblesville, and Indianapolis (collectively, the Cities) filed a request for a 180-day extension of the negotiating periods under the NITUs. The Owners, all of which join in the Cities' filing, represent that they are agreeable to the requested NITU extensions to permit trail use negotiations to continue.

Because the Owners are willing to continue negotiating for trail use with the Cities, the request to extend the negotiating periods under the NITUs will be granted and the periods extended to December 16, 2019. This decision extending the negotiating periods does not reflect or presuppose any particular resolution of the pending motion to vacate the NITUs.

It is ordered:

1. The Cities' request to extend the negotiating periods under the NITUs is granted, and the negotiating periods are extended to December 16, 2019.

2. This decision is effective on its date of service.

By the Board, Allison C. Davis, Director, Office of Proceedings.